

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 16 2004

CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

JENNIFER GAYLE LEAHY,

Petitioner - Appellant,

v.

TEENA FARMON, Warden,

Respondent - Appellee.

No. 01-17467*

D.C. No. CV-96-03452-PJH

MEMORANDUM**

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted October 11, 2002
San Francisco, California

Withdrawn from Submission December 9, 2002
Resubmitted April 3, 2003***

* Decided and filed together with the companion case of *Kesser v. Cambra*, No. 02-15475, _____ WL _____, (9th Cir. 2004) (published disposition).

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

*** This appeal was withdrawn from submission pending the Supreme Court's decision in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). This
(continued...)

Before: BALDOCK,*** KLEINFELD, and RAWLINSON, Circuit
Judges.*****

Petitioner Jennifer Gayle Leahy, and her co-defendants Richard Kesser and Stephen Chiara, were convicted in California state court of first degree murder with special circumstances and sentenced to life imprisonment without the possibility of parole. *See* Cal. Penal Code §§ 187(a), 190.2(a)(1), (a)(15). The California Court of Appeal affirmed, *People v. Chiara*, No. 93DA1422 (Cal. Ct. App., filed Dec. 12, 1995), and the California Supreme Court denied review. *People v. Chiara*, Nos. A060502, S051306 (Cal., filed March 14, 1996).

Petitioner thereafter petitioned the federal district court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The district court denied the petition, *Leahy v. Farmon*, 177 F. Supp. 2d 985 (N.D. Cal. 2001), and granted a Certificate of Appealability on one issue: Whether Petitioner's

***(...continued)

Memorandum was circulated to the panel on October 23, 2003.

**** The Honorable Bobby R. Baldock, Senior United States Court of Appeals Judge for the Tenth Circuit, sitting by designation.

***** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

equal protection rights as enunciated in *Batson v. Kentucky*, 476 U.S. 79 (1986), were violated when the prosecutor peremptorily challenged three Native Americans from the venire. *See* 28 U.S.C. § 2253(c).

The facts and legal issues in this appeal are identical to those discussed and resolved in *Kesser v. Cambra*, No. 02-15475, ____ WL ____ (9th Cir. 2004) (published disposition), filed concurrently with this Memorandum Order. For the reasons stated in that opinion, the judgment of the district court denying Petitioner a writ of habeas corpus is

AFFIRMED.